

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 289
101ST GENERAL ASSEMBLY

1321H.07C

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 285.575, 287.245, 537.620, and 590.030, RSMo, and to enact in lieu thereof five new sections relating to public safety employees.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 285.575, 287.245, 537.620, and 590.030, RSMo, are repealed and
2 five new sections enacted in lieu thereof, to be known as sections 285.575, 287.245, 320.400,
3 537.620, and 590.030, to read as follows:

285.575. 1. This section shall be known and may be cited as the "Whistleblower's
2 Protection Act".

3 2. As used in this section, the following terms shall mean:

4 (1) "Because" or "because of", as it relates to the adverse decision or action, the person's
5 status as a protected person was the motivating factor;

6 (2) "Employer", an entity that has six or more employees for each working day in each
7 of twenty or more calendar weeks in the current or preceding calendar year [~~— "Employer" shall~~
8 ~~not include the state of Missouri or its agencies, instrumentalities, or political subdivisions,~~
9 ~~including but not limited to any public institution of higher education, a corporation wholly~~
10 ~~owned by the state of Missouri, an individual employed by an employer, or corporations and~~
11 ~~associations owned or operated by religious or sectarian organizations];~~

12 (3) "Proper authorities", a governmental or law enforcement agency, an officer of an
13 employee's employer, the employee's supervisor employed by the employer, or the employee's
14 human resources representative employed by the employer;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

15 (4) "Protected person", an employee of an employer who has reported to the proper
16 authorities an unlawful act of his or her employer; an employee of an employer who reports to
17 his or her employer serious misconduct of the employer that violates a clear mandate of public
18 policy as articulated in a constitutional provision, statute, or regulation promulgated under
19 statute; or an employee of an employer who has refused to carry out a directive issued by his or
20 her employer that if completed would be a violation of the law[. ~~An employee of an employer
21 is not a protected person if:~~

22 ~~—— (a) The employee is a supervisory, managerial, or executive employee or an officer of
23 his or her employer and the unlawful act or serious misconduct reported concerns matters upon
24 which the employee is employed to report or provide professional opinion; or~~

25 ~~—— (b) The proper authority or person to whom the employee makes his or her report is the
26 person whom the employee claims to have committed the unlawful act or violation of a clear
27 mandate of public policy];~~

28 (5) "The motivating factor", the employee's protected classification actually played a role
29 in the adverse decision or action and had a determinative influence on the adverse decision or
30 action.

31 3. This section is intended to codify the existing common law exceptions to the at-will
32 employment doctrine and to limit their future expansion by the courts. This section, in addition
33 to chapter 213 and chapter 287, shall provide the exclusive remedy for any and all claims of
34 unlawful employment practices.

35 4. It shall be an unlawful employment practice for an employer to discharge an individual
36 defined as a protected person in this section because of that person's status as a protected person.

37 5. A protected person aggrieved by a violation of this section shall have a private right
38 of action for actual damages for violations of this section but not for punitive damages.
39 [~~However, if a private right of action for damages exists under another statutory or regulatory
40 scheme, whether under state or federal law, no private right of action shall exist under this
41 statute.~~]

42 6. Any party to any action initiated under this section may demand a trial by jury.

43 7. A protected person aggrieved by a violation of this section shall have a private right
44 of action that may be filed in a court of competent jurisdiction. The only remedies available in
45 such an action shall be:

46 (1) Back pay;

47 (2) Reimbursement of medical bills directly related to a violation of this section; and

48 (3) Additionally, if a protected person proves, by clear and convincing evidence, that the
49 conduct of the employer was outrageous because of the employer's evil motive or reckless
50 indifference to the rights of others, then, such person may receive double the amount awarded

51 under subdivisions (1) and (2) of this subsection, as liquidated damages. In applying this
52 subdivision, the provisions of section 510.263 shall be applied as though liquidated damages
53 were punitive damages and as though the amounts referenced in subdivisions (1) and (2) of this
54 subsection were compensatory damages.

55 8. The court, in addition to the damages set forth in subsection 7 of this section, may
56 award the prevailing party court costs and reasonable attorney fees; except that a prevailing
57 respondent may be awarded reasonable attorney fees only upon a showing that the case was
58 without foundation.

287.245. 1. As used in this section, the following terms shall mean:

2 (1) "Association", volunteer fire protection associations as defined in section 320.300;

3 (2) "State fire marshal", the state fire marshal selected under the provisions of sections
4 320.200 to 320.270;

5 (3) "Volunteer firefighter", the same meaning as in section 287.243;

6 (4) **"Voluntary firefighter cancer benefits pool" or "pool", the same meaning as in**
7 **section 320.400.**

8 2. (1) Any association may apply to the state fire marshal for a grant for the purpose of
9 funding such association's costs related to workers' compensation insurance premiums for
10 volunteer firefighters.

11 (2) **Any voluntary firefighter cancer benefits pool may apply to the state fire**
12 **marshal for a grant for the purpose of establishing a voluntary firefighter cancer benefits**
13 **pool. This subdivision shall expire June 30, 2023.**

14 3. Subject to appropriations, the state fire marshal ~~shall~~ **may** disburse grants to ~~each~~
15 **any** applying volunteer fire protection association ~~according~~ **subject** to the following schedule:

16 (1) Associations which had zero to five volunteer firefighters receive workers'
17 compensation benefits from claims arising out of and in the course of the prevention or control
18 of fire or the underwater recovery of drowning

19 victims in the preceding calendar year shall be eligible for two thousand dollars in grant money;

20 (2) Associations which had six to ten volunteer firefighters receive workers'
21 compensation benefits from claims arising out of and in the course of the prevention or control
22 of fire or the underwater recovery of drowning victims in the preceding calendar year shall be
23 eligible for one thousand five hundred dollars in grant money;

24 (3) Associations which had eleven to fifteen volunteer firefighters receive workers'
25 compensation benefits from claims arising out of and in the course of the prevention or control
26 of fire or the underwater recovery of drowning victims in the preceding calendar year shall be
27 eligible for one thousand dollars in grant money;

28 (4) Associations which had sixteen to twenty volunteer firefighters receive workers'
29 compensation benefits from claims arising out of and in the course of the prevention or control
30 of fire or the underwater recovery of drowning victims in the preceding calendar year shall be
31 eligible for five hundred dollars in grant money.

32 4. Grant money disbursed under this section shall only be used for the purpose of paying
33 for the workers' compensation insurance premiums of volunteer firefighters **or establishing a**
34 **voluntary firefighter cancer benefits pool.**

320.400. 1. For purposes of this section, the following terms mean:

- 2 (1) "Covered individual", a firefighter who:
3 (a) Is a paid employee or is a volunteer firefighter as defined in section 320.333;
4 (b) Has been assigned to at least five years of hazardous duty as a firefighter;
5 (c) Was exposed to an agent classified by the International Agency for Research on
6 Cancer, or its successor organization, as a group 1 or 2A carcinogen or classified as a
7 cancer causing agent by the American Cancer Society, the American Association for
8 Cancer Research, the Agency for Health Care Policy and Research, the American Society
9 for Clinical Oncology, the National Institute for Occupational Safety and Health, or the
10 United States National Cancer Institute;
11 (d) Was last assigned to hazardous duty as a firefighter within the previous fifteen
12 years; and
13 (e) Is not seventy years of age or older at the time of the diagnosis of cancer;
14 (2) "Dependent", the same meaning as in section 287.240;
15 (3) "Employer", any political subdivision of the state;
16 (4) "Voluntary firefighter cancer benefits pool" or "pool", an entity described in
17 section 537.620 that is established for the purposes of this section.

18 2. (1) Three or more employers may create a voluntary firefighter cancer benefits
19 pool for the purpose of this section. An employer may make contributions into the
20 voluntary firefighter cancer benefits pool established for the purpose of this section. The
21 contribution levels and award levels shall be set by the board of trustees of the pool.

22 (2) For an employer that chooses to make contributions into the voluntary
23 firefighter cancer benefits pool, the pool shall provide the minimum benefits specified by
24 the board of trustees of the pool to covered individuals, based on the award level of the
25 cancer at the time of diagnosis, after the employer becomes a participant.

26 (3) Benefit levels shall be established by the board of trustees of the pool based on
27 the category and stage of the cancer.

28 (4) In addition to an award under subdivision (3) of this subsection:

29 (a) A payment may be made from the pool to a covered individual for the actual
30 award, up to twenty-five thousand dollars, for rehabilitative or vocational training
31 employment services and educational training relating to the cancer diagnosis; or

32 (b) A payment may be made to a covered individual of up to ten thousand dollars
33 if the covered individual incurs cosmetic disfigurement costs resulting from cancer.

34 (5) If the cancer is diagnosed as terminal cancer, the covered individual may receive
35 a lump-sum payment of twenty-five thousand dollars as an accelerated payment toward
36 the benefits due based on the benefit levels established under subdivision (3) of this
37 subsection.

38 (6) The covered individual may receive additional awards if the cancer increases
39 in award level, but the amount of any benefit paid earlier for the same cancer may be
40 subtracted from the new award.

41 (7) If a covered individual dies while owed benefits pursuant to this section, the
42 benefits shall be paid to the dependent or domestic partner, if any, at the time of death.
43 If there is no dependent or domestic partner, the obligation of the pool to pay benefits shall
44 cease.

45 (8) If a covered individual returns to the same position of employment after a
46 cancer diagnosis, the covered individual may receive benefits in this section for any
47 subsequent new type of covered cancer diagnosis.

48 (9) The benefits payable pursuant to this section shall be reduced by twenty-five
49 percent if a covered individual used a tobacco product within the five years immediately
50 preceding the cancer diagnosis.

51 (10) A claim for benefits from the pool shall be filed no later than two years after
52 the diagnosis of the cancer. The claim for each type of cancer needs to be filed only once
53 to allow the pool to increase the award level under subdivision (3) of this subsection.

54 (11) For purposes of all other employment policies and benefits that are not
55 workers' compensation benefits payable under chapter 287, health insurance, and any
56 benefits paid under chapter 208, a covered individual's cancer diagnosis shall be treated
57 as an on-the-job injury or illness.

58 3. The board of trustees of the pool may:

59 (1) Create a program description to further define or modify the benefits of this
60 section;

61 (2) Modify the contribution rates; benefit levels, including the maximum amount,
62 consistent with subdivision (1) of this subsection; and structure of the benefits based on
63 actuarial recommendations and with input from a committee of the pool; and

64 **(3) Set a maximum amount of benefits that may be paid to a covered individual for**
65 **each cancer diagnosis.**

66 **4. The board of trustees of the pool shall be considered a public governmental body**
67 **and shall be subject to all of the provisions of chapter 610.**

68 **5. A pool may accept or apply for any grants or donations from any private or**
69 **public source.**

70 **6. (1) Any pool may apply to the state fire marshal for a grant for the purpose of**
71 **establishing a voluntary firefighter cancer benefits pool. The state fire marshal shall**
72 **disburse grants to the pool upon receipt of the application.**

73 **(2) The state fire marshal may grant moneys disbursed under section 287.245 to be**
74 **used for the purpose of setting up a pool.**

75 **(3) This subsection shall expire on June 30, 2023.**

76 **7. (1) This subsection shall not affect any determination as to whether a covered**
77 **individual's cancer arose out of and in the course of employment and is a compensable**
78 **injury under chapter 287. Receipt of benefits from the pool under this section shall not be**
79 **considered competent evidence or proof by itself of a compensable injury under chapter**
80 **287.**

81 **(2) Should it be determined that a covered individual's cancer arose out of and in**
82 **the course of employment and is a compensable injury under chapter 287, the**
83 **compensation and death benefit provided under chapter 287 shall be reduced one hundred**
84 **percent by any benefits received from the pool under this section.**

85 **(3) The employer in any claim made under chapter 287 shall be subrogated to the**
86 **right of the employee or to the dependent or domestic partner to receive benefits from the**
87 **pool and such employer may recover any amounts that such employee or the dependent or**
88 **domestic partner would have been entitled to recover from the pool under this section.**
89 **Any receipt of benefits from the pool under this section shall be treated as an advance**
90 **payment by the employer, on account of any future installments of benefits payable under**
91 **chapter 287.**

537.620. Notwithstanding any direct or implied prohibitions in chapter 375, 377, or 379,
2 any three or more political subdivisions of this state may form a business entity for the purpose
3 **described in section 320.400 or for the purpose** of providing liability and all other insurance,
4 including insurance for elderly or low-income housing in which the political subdivision has an
5 insurable interest, for any of the subdivisions upon the assessment plan as provided in sections
6 537.600 to 537.650. Any public governmental body or quasi-public governmental body, as
7 defined in section 610.010, and any political subdivision of this state or any other state may join
8 this entity and use public funds to pay any necessary assessments. Except for being subject to

9 the regulation of the director of the department of commerce and insurance under sections
10 375.930 to 375.948, sections 375.1000 to 375.1018, and sections 537.600 to 537.650, any such
11 business entity shall not be deemed to be an insurance company or insurer under the laws of this
12 state, and the coverage provided by such entity and the administration of such entity shall not be
13 deemed to constitute the transaction of an insurance business. Risk coverages procured under
14 this section shall not be deemed to constitute a contract, purchase, or expenditure of public funds
15 for which a public governmental body, quasi-public governmental body, or political subdivision
16 is required to solicit competitive bids.

590.030. 1. The POST commission shall establish minimum standards for the basic
2 training of peace officers. Such standards may vary for each class of license established pursuant
3 to subsection 2 of section 590.020.

4 2. The director shall establish minimum age, citizenship, and general education
5 requirements and may require a qualifying score on a certification examination as conditions of
6 eligibility for a peace officer license. Such general education requirements shall require
7 completion of a high school program of education under chapter 167 or obtainment of a General
8 Educational Development (GED) certificate.

9 3. The director shall provide for the licensure, with or without additional basic training,
10 of peace officers possessing credentials by other states or jurisdictions, including federal and
11 military law enforcement officers.

12 4. The director shall establish a procedure for obtaining a peace officer license and shall
13 issue the proper license when the requirements of this chapter have been met.

14 5. As conditions of licensure, all licensed peace officers shall:

15 (1) Obtain continuing law enforcement education pursuant to rules to be promulgated
16 by the POST commission; ~~and~~

17 (2) Maintain a current address of record on file with the director; **and**

18 (3) **Submit to being fingerprinted on or before January 1, 2022, and at any time a**
19 **peace officer is commissioned with a different law enforcement agency, for the purpose of**
20 **a criminal history background check and enrollment in the state and federal Rap Back**
21 **programs, under section 43.540. The criminal history background check shall include the**
22 **records of the Federal Bureau of Investigation. The resulting report shall be forwarded**
23 **to the officer's commissioning law enforcement agency at the time of enrollment and Rap**
24 **Back enrollment shall be for the purpose of the requirements of subsection 3 of section**
25 **590.070 and subsection 2 of section 590.118. An officer shall take all necessary steps to**
26 **maintain enrollment in Rap Back at all law enforcement agencies where the officer is**
27 **commissioned for as long as the officer is commissioned with that agency.**

28 6. A peace officer license shall automatically expire if the licensee fails to hold a
29 commission as a peace officer for a period of five consecutive years, provided that the POST
30 commission shall provide for the relicensure of such persons and may require retraining as a
31 condition of eligibility for relicensure, and provided that the director may provide for the
32 continuing licensure, subject to restrictions, of persons who hold and exercise a law enforcement
33 commission requiring a peace officer license but not meeting the definition of a peace officer
34 pursuant to this chapter.

35 **7. All law enforcement agencies shall enroll in the state and federal Rap Back**
36 **programs on or before January 1, 2022, and continue to remain enrolled. The law**
37 **enforcement agency shall take all necessary steps to maintain officer enrollment for all**
38 **officers commissioned with that agency in the Rap Back programs. An officer shall submit**
39 **to being fingerprinted at any law enforcement agency upon commissioning and for as long**
40 **as the officer is commissioned with that agency.**

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